Supreme Court, U.S.
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03-578

UNITED STATES SUPREME COURT

LOUIS F. GAINES,
Plaintiff - Petitioner

v.

WHITE RIVER ENVIRONMENTAL PARTNERSHIP, Et Al .,
Defendants - Respondents

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

PETITION FOR A REHEARING

Louis F. Gaines, Pro Se
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317--283-4821

QUESTIONS FOR REVIEW

1. While Pro Se Plaintiff was complying with the Seventh Court's amendment procedure, the Defendants used this situation to: (1) commit "Fraud & Perjury" against the Plaintiff, and the Lower Courts; (2) secure a favorable summary judgment; and, (3) seek and receive severe sanctions against the Plaintiff, which were imposed by the Seventh Court. If any of the foregoing has denied Pro Se Plaintiff due process, and/or equal protection of the law; or, a meaningful opportunity to be heard - then what relief is the Plaintiff due?

2. Since the Second Appellate Court, and the Seventh disagree on the amendment procedure for "Complaints," should the Supreme Court clarify or decide this issue?

3. Since the Second and Seventh Appellate Courts disagree on amendment procedure, and since the Defendants have previously caused the Plaintiff to suffer an "Irreparable Injury:" a sprang neck, and a partial hearing loss, which took place during "Discovery" - what relief is the Plaintiff due?

4. See "Questions #1 and 3: Through the use of coercion and/or threats, the Defendants continue to "Retaliate" against the Plaintiff. If the foregoing acts have denied the Plaintiff due process, and/or equal protection of the law - then what relief is the Plaintiff due?

5. What other relief is due to Pro Se Plaintiff?

LIST OF PARTIES

See the PETITION FOR WRIT OF CERTIORARI, P. iii.

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UNITED STATES CONSTITUTION

Article IV, § 2 (1) ; PP. 1. & 10.

FEDERAL RULES OF CIVIL PROCEDURE

Rule 56(g); PP. 1. & 9.

Rule 60(b); PP. 1. & 9.

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* For the Petition for Rehearing - all previously cited "Authorities" are incorporated here. See Petition for Writ of Certiorari, PP. v., vi., & vii.; PP. 20-29 & Appendix E., PP. 73-80.

CITATION OF OPINIONS OR REPORTS:
(See Petition for Writ of Certiorari, P. 1.)

SUPREME COURT's JURISDICTION

This Petition For A Rehearing comes to the Supreme Court on the authority of Title 28, U.S.C. , § 1254, and The Rules of the Supreme Court, Rule 44.

CONSTITUTION & OTHER AUTHORITY

One, for the United States Constitution: Article IV, § 2(1), see Appendix, P. 1; and , for the Fifth, Eighth, & Thirteenth Amendments, see Petition for Writ of Certiorari, PP. 20-29; Ibid., Appendix E., PP. 73-79. Two, for Title 29, U.S.C. , § 623(d); and, Title 42, U.S.C. , § 2000e-3(a); Ibid., PP. 20-28, and Appendix E., PP. 74-76. Three, for the Federal Rules Of Civil Procedure, Rules 9(b), and 56(c); and, the Federal Rules of Evidence, Rule 406; Ibid., Appendix, PP. 78-9. Four, for the Federal Rules of Civil Procedure, Rules 56(g) and Rule 60(b); see the current Appendix, PP. 1-2.

STATEMENT OF THE CASE

One, this employment discrimination suit was timely placed on the Supreme Court's docket on October 20, 2K03. Two, on December 1, 2K03, the Petition for a Writ of Certiorari was denied. Three, this Petition for a Rehearing follows.

Material Facts To Consider:

Defendants' Fraud & Perjury, Or Retaliation Against The Plaintiff:

1. After the Supreme Court entered its "Order" of December 1, 2K03, Pro Se Plaintiff realized that while he had faithfully complied with the Seventh Court's "Amendment Procedure: no amendments after the filing of a summary judgment motion;" the Defendants have used the foregoing as an opportunity to commit "Fraud & Perjury" against the Plaintiff, and the Lower Courts - with regards to EEOC Charge #240-A20-1240. See Petition for a Writ of Certiorari, PP. 4-7.

2. On December 10, 2K03, in . . . , 1:03-CV-0729-SEB-VSS, the PLAINTIFF's AFFIDAVIT IN SUPPORT OF "Plaintiff's Motion For Relief Against The Defendant's Fraud & Perjury, Or Retaliation" was filed with the District Court, and it is partially quoted here:

> 4. EEOC Charge #240-A20-1240 reads in part as follows. See Appendix, Plaintiff's Exhibit # 45:
>
> > 3.a. On December 13, 2001, 'Confined Space Training' was scheduled for me and it was attended as scheduled. About 1.5 hours of personal time was used for such training. On January 04, 2K02 Mr. G. Russell, Jr., Operations Manager, assured me that payment would be included in the current pay

period. As of March 04, 2K02 - payment still has not been received.

5. On January 5, 2K02, my E-Mail, 'Pay Adjustment;' was sent to Ms. C. Mazza of Accounting, and a copy was sent to Mr. George Russell, Jr., Operation Manager. This letter reads as follows. Ibid., Plaintiff's Exhibit #42:

> Christine:
>
> On December 13, 2K01, 'Confine Space training was taken, which amounted to about 1.5 hours of overtime; however, it was not claimed by mistake.
>
> Payment should have been for the period ending December 22, 2K01.
>
> Given the above, would it be okay to claim it for the period ending January 5, 2K02? If not, then what procedure should be used?

6. January 4, 2K02, Ms. C. Mazza replied with the following statement, as it pertains to P. 3., § 5. 'George would you see that this time is taken care of? Thanks.' Ibid., #43.

7. In response to P. 4., ¶ 6., Mr. George Russell, Jr., wrote the following: 'Louis, we will make the appropriate adjustments this pay period . . . . . Thanks' Ibid., #44.

3. No other communication on this subject took place with the Defendants. Ibid., #42, 43 & 44.

> 8. In his 'Affidavit' for *Gaines v. White River Environmental Partnership, et al.*, IP 02-0595-C-T/K, August 28, 2K02; Mr. George Russell, Jr., 'Affirmed' all the following, and under the penalty of 'Perjury.' Ibid., #46:
>
> > 47. Under WREP policy all Operation Department employees are entitled to pay for time spent in mandatory training sessions like 'confined space training.' I do not keep track of training pay for each employee. To receive training pay, all employees must mark the date and time of the training session at issue on their weekly timecard. Training pay is then included in the next paycheck.
> >
> > 48. Gaines was not paid for the December 13, 2001, 'confined space training' session because he never submitted a timecard requesting pay for that session. Some months after the session, when Gaines brought up the issue, I told him he would be paid for training once he submitted a timecard for training and advised his supervisor of the situation.

Defendants' Fraud & Perjury Against The Lower Courts:

4. In rendering a favorable Summary Judgment to the Defendants on EEOC Charge #240-A20-1240, the District Court in . . . , 0505 wrote the following. Ibid., Exhibit #48:

> ENTRY DISCUSSING CROSS MOTIONS FOR SUMMARY JUDGMENT AND DIRECTING ENTRY OF FINAL JUDGMENT
>
> For the reasons explained in this Entry, the plaintiff's many claims in this action for employment discrimination do not survive the defendants' motion for summary judgment, which must be granted, and the plaintiff's own motion for summary judgment must be denied.
>
> D. Material Facts
>
> Gaines' Complaints About Training Pay
>
> 53. Under WREP policy, all Operation Department employees are entitled to pay for time spent in mandatory training sessions like 'confined space training.
>
> 54. To receive training pay, all employees must mark the date and time of the training at issue on their timecard. The training pay would then be included in the next paycheck.
>
> 55. Gaines was not paid for the

December 13, 2001 'confined space training' session because he never submitteded a timecard requesting pay.

56. Some months after the session, when Gaines brought the issue to Russell's attention, Russell told Gaines that he would be paid for the training once he submitted the time on his timecard and notified his supervisor of the situation.

Seventh Court's Severe Sanctions On Pro Se Plaintiff

5. In its "Order" of July 24, 2K03, the Seventh Court declared that the Plaintiff's appeals were "frivolous," and fined him $2,500.00. See Plaintiff's Petition for a Writ of Certiorari , P. 17 . , ¶¶ 1 & 2 .

6. Plaintiff's opposition to the above sanction was timely mailed, and received by the Seventh Court; but, was never filed on the Docket Sheet. Ibid., P. 18.

7. On November 17, 2K03, the Seventh Court wrote the following on its Docket Sheet:

> PURSUANT TO THIS COURT'S ORDER/ OPINION in Case Number(s): 02-4289 & 03-1967, Appellant Louis F. Gaines . . . IS RESTRICTED FROM FURTHER FILINGS IN THIS COURT.

Conflicting Opinions Between Appellate Courts:

8. In its "Order" of July 24, 2K03, the Seventh Court wrote in part the following. See Petition for Writ of Certiorari, Appendix, P. 6:

> . . . A district court's denial of a motion to amend, even if erroneous, does not justify the filing of the proposed amendment as a new lawsuit.

9. In *Curtis v. Citibank, N. A. , 226 F.3d* 133, 135 (2nd Cir. 2000); the Second Court held the following:

> 14. Judgment
>
> Under the doctrine of claim preclusion, a plaintiff seeking to litigate events arising after the filing of a complaint has no continuing obligation to file amendments to stay abreast of subsequent events; the plaintiff may simply bring a later suit on those later-arising claims.

Defendants' Continuing Retaliation:

10. Based on the Seventh Court's "Order" of July 24, 2K03, the Defendants issued their letter of August 11, 2K02, to Pro Se Plaintiff, which reads in part as follows. See Defendants' NOTICE OF SEVENTH CIRCUIT'S ORDER . . ., in IP 1:03-CV-0723-SEB-VSS; Appendix C:

> Within the next 15 days, we encourage you to consult with counsel and reconsider your decision to pursue your latest lawsuit and the petition to the Supreme Court. We believe the lawsuit and the petition are groundless, and we are providing you the opportunity to dismiss them voluntarily. Should you choose to proceed with the fifth lawsuit, our counsel will file a motion to dismiss the case. Further, because we believe the latest lawsuit is frivolous, we will ask the Court for sanctions, attorney's fees and costs. Also, please understand that should you choose to continue with this latest lawsuit and the Court determines that it is groundless and frivolous, you will be subject to further disciplinary action, up to and including termination.

Defendants' Procedural Violations

11. The Defendants repeatedly violated the filing procedure of the Seventh Court, and they were never sanctioned. See Docket Sheet for . . . , 02-3849, 02-4289 & 03-1957.

ARGUMENT

Summary: The Defendants have freely used "Fraud & Perjury" to help deny Pro Se Plaintiff "Equal Employment Opportunity. Furthermore, the Seventh Court has severely sanctioned Pro Se Plaintiff under the foregoing circumstances, in addition to rendering "Inconsistent Rulings." Pro Se Plaintiff is entitled to all due relief.

I. Defendants' Have Committed Intentional Fraud & Perjury Against The Plaintiff & The Lower Courts; And, Plaintiff Is Entitled To All Due Relief

A. Legal standards. See: (1) Petition for Writ of Certiorari, PP. 20-29, which includes court cases; (2) Appendix E., PP. 73-79; and, (3) the current Appendix, for Federal Rules of Civil Procedure, Rules 56(g) and 60(b); PP. 1-2.

B. Argument: One, the Defendants have knowingly and willfully used "Fraud & Perjury" to deny, or help deny, Pro Se Plaintiff Due Process and Equal of the Law. See PP. 2-4. Two, Pro Se Plaintiff is truly entitled to all "Fair" relief.

II. The Seventh Court Has Severely Sanctioned Pro Se Plaintiff In Error.

A. Legal standards. See I. A. , above.

B. One, having erroneously and harmfully sanctioned Pro Se Plaintiff under "Fraudulent Conditions," the Seventh Court should now severely sanctioned the Defendants. Two, Pro Se Plaintiff is entitled to all other "Fair" relief. See PP. 2-6., and P. 9., ¶ 11.

III. The Conflicting Amendment Procedure Between The Second & Seventh Courts Should, In Fairness, Be Resolved.

A. Legal standard. See I.A., and current

Appendix, for Article IV., § 2(1); P. 1.

B. Argument: One, and for the present case, the Seventh Court's ruling is in conflict with: (1) relevant rulings of the Supreme Court, see Petition for Writ of Certiorari, PP. 20-28; (2) the intent of Congress, Ibid.; and, (3) the Second Appellate Court, see P. 7., ¶¶ 8 & 9. Two, the Supreme Court's supervisory authority is needed here; needed for the mutual benefit of all. Three, Pro Se Plaintiff is entitled to all other due relief.

Conclusion & Relief

A gross injustice has been done to Pro Se Plaintiff, and gross justice is due. On the foregoing authority, PP. 9 & 10, relieve the Plaintiff from the: (1) Defendants' "Fraud & Perjury, Or Retaliation; (2) erroneous and severe sanctions of the Seventh Court; and, (3) conflicting standards of the Seventh Court. See Petition for Writ of Certiorari, P. 29., for other "Fair" relief.

Sincerely,

LOUIS F. GAINES, December 19, 2K03
Pro Se

CERTIFICATE OF GOOD FAITH

Consistent with the Rules of the Supreme Court, Rule 44., this Petition for a Rehearing is being brought to the Supreme Court in the "Best Of Faith," and no attempt is made, in any way, to cause the slightest delay. Pro Se Plaintiff is simply trying to defend or protect his rights to "Equal Employment Opportunity," or Due Process and Equal Protection of the Law. In the case of *LaChance v. Erickson*, 139 L Ed 2d 695, 697, 1998; the Supreme Court held, for example, the following:

> Fraud and Deceit
>
> 6. One who files a false affidavit required by statue may properly be fined and imprisoned.

Sincerely,

LOUIS F. GAINES, December 19, 2K03
Pro Se

APPENDIX

LEGAL AUTHORITY

1. UNITED STATES CONSTITUTION, Article IV., § 2(1): The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the Several States.

FEDERAL RULES OF CIVIL PROCEDURE:

Rule 56(g): Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavit caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

60(b) Mistake; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the court may relieve a party of a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the

judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. . . .